

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FILED/ACCEPTED
JUL - 3 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Knology of the Black Hills, LLC)
f/k/a PrairieWave Black Hills, LLC)
)
Petition for Waiver of Section 54.802(a))
of the Commission's Rules)

CC Docket No. 96-45

WC

08-71

To: Chief, Wireline Competition Bureau

PETITION FOR WAIVER – EXPEDITED ACTION REQUESTED

Pursuant to Section 1.3 of the Commission's Rules,¹ Knology of the Black Hills, LLC f/k/a PrairieWave Black Hills, LLC ("Black Hills" or the "Company") hereby requests the Federal Communications Commission ("FCC" or "Commission") for a waiver of the September 28, 2007 deadline for submitting line-count data for receipt of Interstate Access Support ("IAS") as specified in Section 54.802(a) of the Commission's Rules² and a waiver of the September 30, 2007 deadline for submitting line-count data for receipt of High Cost Model ("HCM") support as specified in Section 54.307(c) of the Commission's Rules³ (collectively, "the Line Count Rules"). As demonstrated herein, strict enforcement of the Line Count Rules in this specific circumstance would be contrary to the public interest in that it would impact the calculation of support for all competitive eligible telecommunications carriers ("CETCs") within the state of South Dakota for the foreseeable future. The Company and other CETCs in South Dakota use

¹ See 47 C.F.R. §1.3.

² See 47 C.F.R. § 54.802(a).

³ See 47 C.F.R. § 54.307(c).

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this support to provide quality telecommunications services to customers in rural areas of the state. Accordingly, waiver of the Line Count Rules is warranted under these circumstances to ensure that the Company and the other CETCs in the state of South Dakota are able to adequately meet the needs of their rural subscribers thus advancing the public interest.

1. BACKGROUND

Black Hills is a CETC providing service within the state of South Dakota in an area served by Qwest, a non-rural local exchange carrier (“LEC”). Under current FCC Rules, CETCs receive high-cost support based on the per-line support received by the incumbent LEC.⁴ Qwest receives IAS and HCM support in the areas in which Black Hills is designated as a CETC. Accordingly, Black Hills receives the same IAS and HCM per-line support received by Qwest so long as certain line count and certification filings are timely made.

The Line Count Rules require that in order for the CETC to receive IAS and HCM support, the CETC must file line count data on a quarterly basis with the Universal Service Administrative Company (“USAC”). One of the quarterly line count filings for IAS is due on the last business day of September while the corresponding quarterly filing for HCM is due on September 30 (the “September Filing Deadlines”).⁵ On September 24, 2007, Black Hills prepared the Form 525 which listed the line count filings as of March 31, 2007 for HCM and the line count filings as of June 30, 2007 for IAS so that it could timely submit the form to meet the September Filing Deadlines and thus be eligible

⁴ See 47 C.F.R. § 54.307.

⁵ See § 54.802(a) & 47 C.F.R. § 54.307(c). Line count data for both of these mechanisms are reported on one FCC Form 525 (Competitive Carrier Line Count Report).

to receive support for both of these mechanisms during the first quarter 2008.⁶ Due to an inadvertent error, however, the form was not submitted.⁷ The Company was not made aware of this error until the first quarter of 2008 when it did not receive the support.

As a result, the Company has had to undergo a severe hardship - a loss in both IAS and HCM support for an entire quarter. This hardship has now been compounded, not only for the Company but also for all of the CETCs within South Dakota due to the Commission's adoption of a cap on funds received by CETCs. On May 1, 2008, the FCC released its *CETC Cap Order* in which the Commission announced that total annual CETC support for each state would be capped at the level of support that CETCs in that state were eligible to receive during March 2008 on an annualized basis.⁸ After analyzing this decision, the Company has discovered that because it did not receive support for the first quarter which includes March 2008, it is likely that USAC will calculate the cap for CETCs in South Dakota without taking these funds into account. As explained below, the operation of this cap in this manner would result in the Company and all other CETCs in South Dakota receiving less than the amount that should be received in all future quarters while the cap is being imposed. Such a result would be contrary to the public interest in that it would severely hinder the ability of the Company

⁶ A copy of the line count filing that was prepared on September 24, 2007 is attached. On this date, the Company was known as PrairieWave Black Hills, LLC. f/k/a Black Hills FiberCom, LLC which is listed as the name of the reporting carrier on the form. Subsequently, the Company's name was changed to Knology of the Black Hills, LLC.

⁷ During September 2007, the Company was undergoing a major transition due to a merger of the Company which took place some months earlier. Due to the reorganization of duties during this transition period, a miscommunication occurred between the two individuals responsible for this filing which resulted in each of the persons believing that the other had submitted the filing.

⁸ See *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Alltel Communications, Inc. et al. Petitions for Designation as Eligible Telecommunications Carriers; RCC Minnesota, Inc. and RCC Atlantic, Inc. New Hampshire ETC Designation Amendment*, WC Docket No. 05-337, CC Docket No. 96-45, Order, FCC 08-122 (rel. May 1, 2008) ("*CETC Cap Order*") at para. 1.

and all other CETCs in South Dakota to meet the needs of their rural subscribers.

Accordingly, the Company seeks waiver of the application of the Line Count Rules and requests that the FCC direct USAC to process the line count information contained on the Form 525 which was to be submitted in September 2007 so that USAC can determine the amount of funds that would have been available to the Company during the first quarter 2008, distribute those funds to the Company and include that amount in calculating the amount of the cap for the state of South Dakota.

2. DISCUSSION

In the context of granting a waiver of the Line Count Rules, the Commission summarized its waiver standard as follows:

[g]enerally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest. Moreover, in demonstrating whether a waiver is warranted, the burden of proof rests with the petitioner.⁹

Black Hills' request for waiver satisfies this standard.

Absent a waiver of the September Filing Deadlines, application of the Line Count Rules under these special circumstances could disproportionately penalize the Company and all other CETCs in the State of South Dakota. In its *CETC Cap Order*, the FCC

⁹ *Federal-State Joint Board on Universal Service; Citizens Communications and Frontier Communications Petition for Waiver of Section 54.802(a) of the Commission's Rules*, CC Docket No. 96-45, DA 05-2829, Order at para. 6 (rel. Oct. 27, 2005) citing 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166; *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

determined that the cap would be based “at the level of support [CETCs] were eligible to receive during March 2008 on an annualized basis.”¹⁰ In this context, the Commission described the March 2008 data as being “actual support amounts.”¹¹ Thus, because the Company did not receive any support for March 2008, the amount that the Company should have received would not be included in the March 2008 data. Because of the operation of the cap, this would negatively impact not only the Company but all CETCs in South Dakota for future payments while the cap is in place. To illustrate, the FCC summarized the operation of the cap as follows:

Under the state-based cap, support will be calculated using a two-step approach. First, on a quarterly basis, the Universal Service Administrative Company (USAC) will calculate the support each competitive ETC would have received under the existing (uncapped) per-line identical support rule, and sum these amounts by state. Second, USAC will calculate a state reduction factor to reduce this amount to the competitive ETC cap amount. Specifically, USAC will compare the total amount of uncapped support to the cap amount for each state. Where the total state uncapped support is greater than the available state cap support amount, USAC will divide the state cap support amount by the total state uncapped amount to yield the state reduction factor. USAC will then apply the state-specific reduction factor to the uncapped amount for each competitive ETC within the state to arrive at the capped level of high-cost support. Where the state uncapped support is less than the available state capped support amount, no reduction will be required.¹²

When USAC makes its “two-step” calculation in future quarters as described above, the total state uncapped support for South Dakota would be greater than the total state capped support because the uncapped support would include the IAS and HCM support amounts due to the Company when it timely files its line counts. USAC would then calculate the

¹⁰ *CETC Cap Order* at para. 38.

¹¹ *Id.*

¹² *Id.* at para. 27.

state reduction factor by dividing the state cap support amount by the total state uncapped amount and apply the resulting factor to the uncapped amount for each CETC within the state. This process would continue for each quarter while the FCC considers further reform.¹³

Accordingly, the imposition of the cap under these circumstances raises grave public interest concerns and consequences which FCC Rules did not contemplate. Absent grant of this waiver, USAC would calculate the state cap support amount without taking into account the amount of support the Company should have received during the month of March 2008 but did not due to the inadvertent error which resulted in the non-submission of line counts. The Company and the other CETCs within the state rely on the receipt of universal service support to provide high-quality telecommunications services to rural communities. Calculating the amount of the cap for the state of South Dakota by excluding these funds due to an inadvertent error would deprive the Company and the other CETCs in the state from these vital funds and thus lessen their ability to maintain and expand these services in rural communities.

For the foregoing reasons, Black Hills respectfully requests that the Bureau expeditiously grant this petition and waive the application of the Line Count Rules for the Form 525 filing containing the Company's line count data for IAS and HCM which was due in September 2007. Further, the Company requests that the FCC direct USAC to process this line count information which is attached to this filing, so that USAC can determine the amount of funds that would have been available to the Company during the first quarter 2008, distribute those funds to the Company and include that amount in calculating the amount of the cap for the state of South Dakota. At a minimum, the

¹³ *Id.* at para. 37.

funding should be restored for purposes of calculating the interim cap amount for South Dakota.

Respectfully submitted,

**Knology of the Black Hills, LLC
f/k/a PrairieWave Black Hills, LLC**

By: /s/ Felix L. Boccucci

Felix L. Boccucci
Vice President of Regulatory Finance/Government
Affairs for Knology, Inc. parent company of
Knology of the Black Hills, LLC
f/k/a PrairieWave Black Hills, LLC

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P.O. Box 510
West Point, Georgia 31833
706/645-3000

June 30, 2008

ATTACHMENT

COMPETITIVE CARRIERS HIGH COST DATA SUBMISSION

(1) Quarterly Submission Date:	9/24/07
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(2) USAC Service Provider Identification Number (SPIN):	143016849
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(3) Company Study Area Code: (First time filers leave blank and a Study Area Code will be assigned)	399006
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(4) Study Area Name:	PrairieWave Black Hills, LLC f/k/a Black Hills FiberCom, LLC		
(5) Company Legal Name:	PrairieWave Black Hills, LLC		
(6) Filer 499 ID:			820752

Check Box if this is a new address/contact from a previous data submission:

☐

(7) Mailing Address:	5100 S. Broadband Lane, Sioux Falls, SD 57108		
(8) Contact Name:	Ann Ludens	(9) Title:	Financial Analyst
(10) Telephone Number:	605-965-9393		
(11) E-mail Address:			

Do Not Write in this Area:
For Administrator's Use Only

(12) Mechanism for which you are requesting support:	(13) Lines Reported as of:	(14) Type of Filing		(15) Worksheet to Complete
		Original	Revision	
High Cost Loop Support (HCL)				Complete HCL and LSS
Local Switching Support (LSS)				Complete HCL and LSS
Interstate Common Line Support (ICLS)				Complete ICLS Worksheet
High Cost Model Support (HCM)	3/31/2007	X		Complete HCM Worksheet
Interstate Access Support (IAS)	6/30/2007	X		Complete IAS Worksheet

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HCL & LSS Line Count Worksheet

[illegible]

ICLS Line Count Worksheet

HIGH COST MODEL (HCM) LINE COUNT WORKSHEET

(2) USAC Service Provider Identification Number (SPI)	143016849	Do Not Write in this Area For Administrator's Use Only			
(3) Company Study Area Code:	399006				
(4) Study Area Name:	PrairieWave Black Hills, LLC f/k/a Black Hills FiberCom, LLC				
(13) Lines Reported as of:	3/31/2007				
(14) Type of Filing:	Original				
Complete one row for each Wire Center.					
(33) Incumbent Carrier Name	(34) Incumbent Carrier SAC	(35) ETC Designation	(36) Wire Center CLLI Code	(37) Wire Center Name	(38) Total Lines
Qwest	395145	399006	BLFRSDCO	Belle Fourche	2024
Qwest	395145	399006	BLHKSDCE	Black Hawk	1243
Qwest	395145	399006	DDWDSDCO	Deadwood	980
Qwest	395145	399006	LEADSDCO	Lead	1128
Qwest	395145	399006	SPRFSDCO	Spearfish	4096
Qwest	395145	399006	STRGSDCO	Sturgis	3236
Qwest	395145	399006	WHWDSDCO	Whitewood	436

Use an additional sheet if necessary.

[illegible]

UNBUNDLED NETWORK ELEMENTS REPORTING

(2) USAC Service Provider Identification Number (SPIN):		143018949		Do Not Write in this Area: For Administrator's Use Only	
(3) Company Study Area Code:		39606			
(4) Study Area Name:		PatriotWave Black Hills, LLC f/k/a Black Hills FiberCom, LLC			

Complete one worksheet for each study area of a Path 1 rural incumbent carrier in which the competitive carrier is reporting lines and uses unbundled network elements ("UNEs") to serve the reported lines. The competitive carrier must separately identify the number of UNE loops, UNE price per loop, any port and vertical services costs included in the UNE loop price, number of loops receiving UNE switching services, the UNE switching price per minute and number of switching minutes.

(51) Incumbent Carrier Name:					
(52) Incumbent Carrier Study Area Code:					
Please provide the following information for Path 1 Rural Incumbent Carrier Study Areas:					
(53) UNE Zone	(54) No. of Loops	(55) Price per Loop	(56) No. of Ports	(57) Price per Port	(58) Price for Vertical Services on each loop
Zone 1					
Zone 2					
Zone 3					
Zone 4					
Zone 5					

Complete one worksheet for each study area of a Path 2 or Path 3 rural incumbent carrier in which the competitive carrier is reporting lines and uses unbundled network elements ("UNEs") to serve the reported lines. For each incumbent study area, list the name of each disaggregation zone. If the disaggregation zone includes more than one UNE zone, please report the lines in each UNE zone per disaggregation zone on a separate row. The competitive carrier must separately identify the number of UNE loops, UNE price per loop, any port and vertical services costs included in the UNE loop price, number of loops receiving UNE switching service, the UNE switching price per minute and number of switching minutes.

Please provide the following information for Path 2 and Path 3 rural incumbent carrier study areas:					
(63) UNE Zone Name	(64) Disaggregation Zone Name	(65) UNE type	(66) Quantity	(67) Price	(68) Minutes
		Loops without port costs			
		Ports			
		No. of loops w/ Vertical Services			
		No. of loops w/ switching			
		Loops without port costs			
		Ports			
		No. of loops w/ Vertical Services			
		No. of loops w/ switching			
		Loops without port costs			
		Ports			
		No. of loops w/ Vertical Services			
		No. of loops w/ switching			
		Loops without port costs			
		Ports			
		No. of loops w/ Vertical Services			
		No. of loops w/ switching			
		Loops without port costs			
		Ports			
		No. of loops w/ Vertical Services			
		No. of loops w/ switching			
		Loops without port costs			
		Ports			
		No. of loops w/ Vertical Services			
		No. of loops w/ switching			

FCC Form 525
High Cost Mechanism
Competitive Carrier Line Count Report

FCC Form 525
OMB Control No. 3060-0986
January 2005

TO BE COMPLETED BY THE REPORTING CARRIER, IF THE REPORTING CARRIER IS FILING FCC FORM 525 ON ITS OWN BEHALF:

Certification of Officer or Employee as to the Accuracy of the Data Reported in FCC Form 525, Line Count Report for Competitive Carriers, on Behalf of Reporting Carrier			
I certify that I am an officer or employee of the reporting carrier; my responsibilities include ensuring the accuracy of the actual line count data reported on FCC Form 525; and, to the best of my knowledge, the information reported on this form is accurate.			
Name of Reporting Carrier: PrairieWave Black Hills, LLC f/k/a Black Hills FiberCom, LLC			
Service Provider Identification Number: 143016849			
Signature of authorized officer or employee: <i>Arlene Morgan</i>			Date: 9/24/07
Printed name of authorized officer or employee: Arlene Morgan			
Title or position of authorized officer or employee: Director of Regulatory Compliance			
Telephone number of authorized officer or employee: (334) 644-9269 ext.			
Study Area Code of Reporting CETC	399006	Filing Due Date for this form (mm/dd/yyyy)	9/30/07
Persons willfully making false statements on this form can be punished by fine or forfeiture under the Communications Act of 1934, 47 U.S.C. §§ 502, 503(b), or fine or imprisonment under Title 18 of the United States Code, 18 U.S.C. § 1001.			